

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Matter of)
)
Amendment of Section 73.202(b)) RM-_____
Table of Allotments)
FM Broadcast Stations)
(Los Lunas and Espanola, NM))

To: Chief, Policy & Rules Division

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PETITION FOR RULE MAKING FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Elliott McDowell, by his attorneys, hereby requests that the Commission amend Section 73.202(b) of its Rules so as to modify the existing allotment for Channel 273C2 at Los Lunas, New Mexico to full Class C status. As will be shown below, this change is fully consistent with the Commission's rules and policies.

At present, the allotment for FM Channel 273C2 at Los Lunas, New Mexico is occupied by a construction permit for FM Station KOYT, owned by Mr. McDowell. Mr. McDowell is in the process of constructing facilities on the West Mesa in Bernalillo County, New Mexico, to effectuate that permit. Mr. McDowell believes that Channel 273 holds the potential for a service to a wider area, however, and by this petition is seeking to upgrade the status of KOYT to that of a full Class C facility. The proposed change would serve the public interest in making the signal of KOYT available to more people and making a better signal available to the population within KOYT's presently authorized 60 dBu contour.

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By thus strengthening the ability of KOYT to survive in the heightened competitive conditions characteristic of today's radio marketplace, KOYT's ability to provide public service programming will be considerably enhanced.

Under the Commission's spacing restrictions, the proposed upgrade is blocked by the existing and authorized facilities of FM Station KIOT, Espanola, New Mexico. Exhibit 1 hereto is an allotment study demonstrating that KIOT's present Class C3 authorization is the only obstacle to the proposed change in KOYT's channel class. Mr. McDowell, who is also the licensee of the Espanola station,¹ has a license to operate KIOT on FM Channel 272A in Espanola. He is in the process of constructing the facilities specified by his outstanding permit for operation on Channel 272C3. If, however, KIOT is allowed to move from Channel 272C3 to Channel 225C3, the proposed upgrade of KOYT could be accommodated without violating the Commission's spacing restrictions.

Attached hereto as Exhibit 2 is an allotment study showing the ability of KIOT to move to Channel 225C3. The only impediment to this plan reflected on the allotment study is a rulemaking proposal for allotment of Channel 225A to Mora, New Mexico, which would conflict with the Espanola allotment proposed hereby Mr.

1 Elliott McDowell will soon file with the Commission an application for FCC consent to the assignment of the KOYT and KIOT authorizations to Wizard Broadcasting Company, a corporation of which he will be the sole stockholder. Once that transaction is consummated, Mr. McDowell will seek substitution of Wizard Broadcasting Company as the petitioner herein.

McDowell. The Mora proposal was, however, eliminated by the Commission's Report and Order in MM Docket No. 90-333, released this date. A copy of that Report and Order is attached hereto as Exhibit 3 for the convenience of the Commission's staff.

Mr. McDowell submits that the proposed change represents a more efficient use of the FM broadcast band in northern New Mexico than that reflected by the present Table of FM Allotments.

Since the instant proposal involves an upgrade for KOYT to a "mutually exclusive higher class ... co-channel" allotment, the Commission is hereby requested to modify the KOYT authorization without opportunity for competing applications for use of Channel 273 at Los Lunas pursuant to Section 1.420(g) of the Commission's Rules.

The proposed change of the Espanola allotment may also be accomplished without opening up KIOT's license or permit to competing applications. Although the change is not to an adjacent channel or to a co-channel allotment, it does not constitute an upgrade of KIOT's existing authorization. Therefore, there is no occasion for providing an extraordinary opportunity for a competing request for use of the new channel at Espanola. Thus both of the changes proposed herein may be made by modification of Mr. McDowell's existing authorizations, and Mr. McDowell hereby requests that the Commission so proceed.

In view of the foregoing, the Commission is hereby requested, through a notice and comment rulemaking, to make the following Section 73.202(b) change to the Table of FM Allotments:

<u>City/State</u>	<u>Present</u>	<u>Channel No.</u>
Espanola, NM		272C3
Los Lunas, NM		273C2, 292C1

<u>City/State</u>	<u>Proposed</u>	<u>Channel No.</u>
Espanola, NM		272C3
Los Lunas, NM		273, 292C1

Mr. McDowell hereby expresses his commitment to seek a construction permit for modified facilities for KOYT consistent with the changes set forth above promptly upon the issuance of a Report and Order mandating the proposal reallocation, and to construct facilities for KOYT as a Class C station and for KIOT on Channel 225C3 once an appropriate construction permit is issued.²

Respectfully submitted,

ELLIOTT McDOWELL

By:



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His Attorneys

February 5, 1993

² The change of KIOT's operating frequency proposed herein may be accomplished without altering the station's antenna height or transmitter location, and therefore may be rendered effective by the license modification requested herein. Mr. McDowell would, of course, advise the Commission of the date the channel change for KIOT is actually effectuated.

ALLOTMENT STUDY FOR CLASS C OPERATION ON FM CHANNEL 273C
 FM STATION KOYT, LOS LUNAS, NEW MEXICO
 JANUARY 30, 1993 PACE AUDIO SERVICES
 REFERENCE COORDINATES: 35-04-04
 106-46-50

Call City of license	Auth Licensee name St FCC file no.	Channel freq	Latitude Longitude	Distance (Km.) Actual Required
KTRA FARMINGTON	LIC DEWEY MATTHEW RUNNELS NM BLH-910304KB	271C 102.1	36-48-52 107-53-32	218.18 105
KIOT ESPANOLA	CP ENCHANTMENT MEDIA, INC. NM BPH-910510IF	272C3 102.3	35-53-55 105-53-52	122.1 176
KIOT ESPANOLA	LIC ENCHANTMENT MEDIA, INC. NM	272A 102.3	35-54-01 105-53-40	122.44 106
KSPK WALSENBURG	LIC MAINSTREET BCG CO. CO BLH-911106KB	272C3 102.3	37-37-39 104-49-17	334.0 176
KWUA CLOVIS	CP KAREN ANN MAINIERI NM BPH-910409MB	272C3 102.3	34-20-36 103-06-17	346.15 176
KMYI KIRTLAND	CP JEFF AND JOELLA THOMAS NM BPH-910226MB	275C 102.9	36-48-40 107-53-49	218.05 105
KNFT-FM BAYARD	LIC KNFT INCORPORATED NM BLH-890726KD	275C1 102.9	32-51-45 108-14-29	279.34 105
KOKN HOBBS	CP COTTONWOOD COMM CORP. NM BPH-870522MA	275C 102.9	32-43-26 103-34-34	394.18 105
KHAC-FM WINDOW ROCK	CP WESTERN INDIAN MINISTRIES AZ BPH-910610ME	276A 103.1	35-39-17 109-02-01	214.83 95
KASK LAS CRUCES	LIC KASK INCORPORATED NM BLH-860912KD	276A 103.1	32-18-21 106-46-43	306.27 95

PAGE 1

ALLOTMENT STUDY FOR CLASS C3 OPERATION ON FM CHANNEL 225C3
 FM STATION KLOT, ESPANOLA, NEW MEXICO
 JANUARY 30, 1993 PACE AUDIO SERVICES
 REFERENCE COORDINATES: 36-04-41
 105-56-16

Call City of license	Auth City of license	Licensee name St FCC file no.	Channel freq	Latitude Longitude	Distance (Km.) Actual Required
KRST ALBUQUERQUE	LIC NM	COMMONWEALTH BROADCAST BMLH-900424KH	222C 92.3	35-12-55 106-27-02	106.37 95
KOFX EL PASO	LIC TX	ELP BROADCASTING ASSOC TX	222C 92.3	31-48-55 106-29-20	475.46 95
KCRT-FM TRINIDAD	ORD CO	INTERNATIONAL STATE BANK CO	223C 92.5	37-14-21 104-30-52	181.06 95
PRM GRANTS		PROPOSED RULE MAKING NM RM-8035	224C2 92.7	35-09-06 107-51-36	202.18 117
KMXQ SOCORRO	LIC NM	H & HSB CORPORATION BLH-880224KC	224A 92.7	34-02-43 106-54-21	242.14 89
KQAY-FM TUCUMCARI	LIC NM	QUAY BROADCASTERS INC NM	224A 92.7	35-10-15 103-42-25	225.73 89
KPSA-FM LA LUZ	LIC NM	COTTONWOOD COMMUNICATIONS BLH-870210KC	224A 92.7	32-58-13 105-59-21	344.70 89
KCRT-FM TRINIDAD	LIC CO	INTERNATIONAL STATE BANK BLH-810804AF	224A 92.7	37-08-45 104-30-42	174.08 89
RM MORA		RULE MAKING PETITION NM DOC-90-333	225A 92.9	35-58-00 105-19-48	56.15 142
NEW SOCORRO	CP NM	WILLIAM H. PACE BPH-911004MI	225A 92.9	34-02-43 106-54-21	242.14 142
KRWN FARMINGTON	LIC NM	MUSIC MEN INCORPORATED BLH-890113KG	225C1 92.9	36-41-45 108-13-23	216.15 211
KTZA ARTESIA	CP NM	PECOS VALLEY BROADCASTING BPH-870204IE	225C 92.9	32-47-39 104-12-27	397.39 237
KTZA ARTESIA	LIC NM	PECOS VALLEY BROADCASTING NM	225C1 92.9	32-47-39 104-12-27	397.39 211
KAMZ EL PASO	CP TX	EL PASO & LUBBOCK INC BMPH-910614IE	226C 93.1	31-47-46 106-28-57	477.51 237

PAGE 2

ALLOTMENT STUDY FOR CLASS C3 OPERATION ON FM CHANNEL 225C3
 FM STATION KIOT, ESPANOLA, NEW MEXICO
 JANUARY 30, 1993 PACE AUDIO SERVICES
 REFERENCE COORDINATES: 36-04-41
 105-56-16

Call	Auth	Licensee name	Channel	Latitude	Distance (Km.)	
City of license		St FCC file no.	freq	Longitude	Actual	Required
KAMZ EL PASO	LIC	EL PASO & LUBBOCK INC TX	226C1 93.1	31-47-34 106-28-47	477.85	211
KKOB-FM ALBUQUERQUE	LIC	SOUTHWEST RADIO CORP NM BLH-841011BY	227C 93.3	35-12-42 106-26-59	106.70	96
KWES RUIDOSO	LIC	WALTON STATIONS-NEW MEX NM BLH-840723CY	228A 93.5	33-23-12 105-40-14	299.50	42
KWES RUIDOSO	CP	WALTON STATIONS-NEW MEX NM BPH-910425ID	228C3 93.5	33-23-12 105-40-14	299.50	43
KALQ-FM ALAMOSA	LIC	COMMUNITY BROADCASTING CO	228A 93.5	37-28-20 105-51-13	154.86	42
ALLOC CLAYTON		NM	228A 93.5	36-27-01 103-10-42	251.34	42

Federal Communications Commission

DA 93-87

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-333

In the Matter of

Amendment of Section 73.202(b), RM-7340
Table of Allotments, RM-7518
FM Broadcast Stations.
(Mora, Bosque Farms and Socorro,
New Mexico)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 27, 1993; Released: February 5, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making*, 5 FCC Rcd 4534 (1990), proposing the allotment of Channel 284A to Mora, New Mexico, as requested by Voices of the Desert ("petitioner"). In response to the *Notice*, H&HSB Corporation ("H&HSB") filed a counterproposal requesting the reallocation of Channel 284C from Socorro to Bosque Farms, New Mexico, as the community's first local FM transmission service, and the modification of Station KMXQ's license to specify Bosque Farms as its community of license.² H&HSB also filed reply comments supporting its counterproposal. No other comments were received.

2. As an initial matter, we note that neither the petitioner nor any other party expressed an intention to apply for Channel 284A, if allotted to Mora. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted and thus it is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we shall dismiss the proposal to allot Channel 284A to Mora. See *Fort Ann, New York*, 6 FCC Rcd 907 (1991), *Woodsville, New Hampshire*, 6 FCC Rcd 609 (1991), and paragraph 2 of the Appendix to the *Notice*.

3. H&HSB states that the allotment of Channel 284C to Bosque Farms could provide the community with its first local FM transmission service. It states that Bosque Farms is incorporated, with a 1980 U.S. Census population of 3,353 persons and a 1988 estimated population of 4,030 persons.³ H&HSB describes Bosque Farms as having a mayor-council form of government, with its own police and fire departments, library and both public and private schools. H&HSB commits to applying for the channel, if allotted.

4. We believe the public interest would be served by reallocating Channel 284C from Socorro to Bosque Farms, and modifying petitioner's license for Station KMXQ to specify Bosque Farms as its community of license. Petitioner has shown that the reallocation will result in a preferential arrangement of allotments. Bosque Farms would receive its first local aural transmission service while Socorro will continue to have local aural transmission service from Station KSRC(AM) and a new FM station on Channel 225A, for which a construction permit has been granted (BPH-911004MI).

5. Channel 284C can be allotted to Bosque Farms in compliance with the Commission's minimum distance separation requirements with a site restriction of 39.8 kilometers (24.7 miles) southwest to avoid a short-spacing to Station KCEM-FM, Channel 283C, Bloomfield, New Mexico, and to accommodate petitioner's desired transmitter site.⁴ Mexican concurrence in the allotment has been received since Bosque Farms is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 22, 1993, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Bosque Farms, New Mexico	284C
Socorro, New Mexico	225A

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of H&HSB Corporation for Station KMXQ IS MODIFIED to specify operation on Channel 284C at Bosque Farms, New Mexico, instead of Socorro, New Mexico, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to

¹ The communities of Bosque Farms and Socorro have been added to the caption.

² Public Notice of the counterproposal was given on October 12, 1990, Report No. 1827.

³ The 1990 U.S. Census lists the population of Bosque Farms as 3,791 persons.

⁴ The coordinates for Channel 284C at Bosque Farms are North Latitude 34-34-40 and West Longitude 106-57-40.

implement the change in community of license and/or upgrade. As a result of this proceeding, H&HSB Corporation, licensee of Station KMXQ, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

9. IT IS FURTHER ORDERED, That the petition of Voices of the Desert (RM-7340) to allot Channel 284A to Mora, New Mexico, IS DISMISSED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau